

NOT FOR PUBLICATION

JUN 3 2003

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

SAYID FAZEL RABI HAMDANI, et al.,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-71250

INS Nos. A23-251-642/644
A74-352-891/893

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted May 14, 2003
Pasadena, California

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

Sayid and Nasrin Hamdani, and their four children, Ali, Aaron, Madina, and Mariam, petition from review of the Board of Immigration Appeals decision affirming the denial of their petitions for asylum. Because the parties are familiar

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

with the facts in this case, we recite them only as necessary. We deny the Hamdanis' petitions.

Petitioners concede their deportability pursuant to INA § 241(a)(1)(B), 8 U.S.C. § 1251(a)(1)(B), admitting that they are nonimmigrants who overstayed the period of their visitor's visas. The Immigration Judge granted Petitioners' request for withholding of deportation to Afghanistan and granted voluntary departure, with the United Kingdom designated as the country of deportation. Petitioners argue, however, that they should have been granted asylum, either from Afghanistan, or alternatively, from the U.K.

We agree with the BIA that Petitioners were firmly resettled in the U.K., so they are not eligible for asylum from Afghanistan. An alien shall not be granted asylum from one country if he or she was "firmly resettled in another country prior to arriving in the United States." INA § 208(b)(2)(A)(vi), 8 U.S.C. § 1258(b)(2)(A)(vi). "An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she [lived in another country with] an offer of permanent resident status, citizenship, or some other type of permanent resettlement. . . ." 8 C.F.R. § 208.15. Petitioners were granted refugee status in Britain, and lived there for 15 years without restrictions on their residence or travel. They were able to secure employment, own a business, buy their own

home, and send their children to public school. Three of the Petitioners were born as British citizens. The entire family was issued government travel documents which permitted freedom of travel outside the U.K., as well as freedom to return. Based on these factors, Petitioners clearly met the 8 C.F.R. § 208.15(b) definition of “firm resettlement.” An IJ “shall not grant asylum to any applicant who filed an application before April 1, 1997, if the alien . . . was firmly resettled within the meaning of § 208.15.” 8 C.F.R. § 208.13(c)(2)(I). Because the Hamdanis’ asylum applications were filed before April 1, 1997, the denial of asylum from Afghanistan is mandatory under these regulations.

Petitioners argue alternatively that they are entitled to asylum from the U.K. as refugees under 8 C.F.R. § 208.13 due to their fear of persecution. Petitioners cite the murder of a nephew by racist “skinheads” or “British nationalists” and other vandalism and threats aimed at them. Though these actions were deplorable, we agree with the BIA’s conclusion that “it does not appear from the record that the respondents were unable to avail themselves of the protection of the government of the United Kingdom.” To the contrary, the British government took action against those responsible. The nephew’s murder was investigated, and three of his attackers were put on trial and sentenced to life in prison. When Mr. Hamdani reported that his children had been harassed at school, the police arrested

the perpetrators. Further weighing against Petitioners' claim are the facts that Mr. Hamdani's sisters (including the mother of the murder victim) have lived on the outskirts of London since 1992 without incident, and Mr. Hamdani has safely returned to Britain for months at a time since moving to the United States. Petitioners do not meet the definition of "refugee" as provided under 8 C.F.R. § 208.13.

The petitions are DENIED.